In the High Court of Judicature at Madras

Dated:24.09.2007

Coram

The Honourable Mr.JUSTICE K.RAVIRAJA PANDIAN
and
The Honourable Mrs.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.12534, 12535 of 2004
and 27088 to 27091 of 2005
& WPMP Nos.29519 to 29526 of 2005

M/s. Electro Steel Castings Limited
represented by Mr.S.Y.Ganapathy
Senior Accounts Manager and
Power of Attorney Holder .... Petitioner in all W.Ps

Vs.

1. The Tamil Nadu Taxation Special Tribunal
Second Floor, Singaravelar Maligai,
Rajaji Salai, Chennai - 600 001.

2. The Sales Tax Appellate Tribunal,
Main Bench, Second Floor,
New City Civil Court Buildings,
Chennai - 600 014.

.... Respondent in all W.Ps.

3. The Appellate Assistant Commissioner (CT) V
Collectorate Campus,
Kancheepuram - 631 501

.... 3rd Respondent in W.P.Nos.12534 & 12535/04

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3. The Appellate Assistant Commissioner (CT) IV
Sixth Floor, Kuralagam Annexe,
Chennai - 108.
....3rd Respondent in W.P.Nos.27088 to 27091/05

4. The Commercial Tax Officer,
Adayar Assessment Circle,
Chennai - 600 028.
.... Respondent in all W.Ps.

5. The Commercial Tax Officer,
Mylapore Assessment Circle,
46, Chamiers Road,
Chennai - 600 028.
....5th Respondent in W.P.Nos.27088 to 27091/05

W.P.Nos.12534 & 12535 of 2004:

Writ petitions under Article 226 of the Constitution of India praying for the issuance of writs of certiorarified mandamus calling for the records on the files of the first respondent in Tax Case (Revision) Nos.191 and 192 of 2000 dated 30.6.2000, quash the same and direct the first respondent to pass orders afresh in accordance with Section 38 of the Tamil Nadu General Sales Tax Act, 1959.

W.P.Nos.27088 to 27091 of 2005:

Writ petitions under Article 226 of the Constitution of India praying for the issuance of writs of certiorari calling for the records on the files of the first respondent in Tax Case (Revision) Nos.2006 to 2009 of 1997 dated 28.04.2000 and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondents: Mr.Haja Nazirudeen, Spl.G.P.(T)

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C O M M O N O R D E R

(Order of the Court was made by CHITRA VENKATARAMAN,J)

Writ Petition Nos.12534 and 12535 of 2004 arise out of the common order passed by the Tamil Nadu Taxation Tribunal in T.C(R) Nos.191 and 192 of 2000 dated 30.6.2000. These two writ petitions relate to the assessment years 1982-83 and 1983-84. Writ Petition Nos.27088 to 27091 of 2005 arise out of the common order passed by the Tamil Nadu Taxation Tribunal in T.C(R) Nos.2006 to 2009 of 1997 relating to the assessment years 1984-85, 1985-86 1986-87 and 1987-88. Since all the writ petitions relate to the common issue, we consider the same under the common order.

2. The petitioner is a manufacturer and dealer in Rough Cast Iron Spun Pipe Castings. The Assessing Officer treated this item as declared goods and the Original assessment was made for the assessment years 1982-83 and 1983-84, at 4% as per Item 4(i) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'the Act'). However, the assessments were sought to be re-opened under Section 16(1)(b) of the Act on the ground that the goods sold were not declared goods falling under any entry including Item 4(i) of the Second Schedule, but to be treated as goods assessable at the multipoint rate of 5% under Section 3(1) of the Act apart from attracting surcharge and additional sales tax. It is stated that the appeals preferred by the writ petitioner before the Appellate Assistant Commissioner were dismissed relying on the decision of the Supreme Court reported in (1993) 90 STC 47 (Bengal Iron Corporation and another Vs. Commercial Tax Officer and others), on the ground that cast iron in Item 4(i) of the second schedule is different from the cast iron castings made out of cast iron. The further appeals by the assessee before the Sales Tax Appellate Tribunal were also dismissed. Aggrieved by this, the petitioner preferred Tax Case Revisions before the Tamil Nadu Taxation Special Tribunal, which confirmed the order of the authorities below. Aggrieved by the common order dated 30.6.2000 passed by the Tamil Nadu Taxation Special Tribunal, the present writ petitions are preferred before this Court.

3. The case of the petitioner herein is that the raw materials required for the manufacture of rough cast iron spun pipe castings are pig iron and C.I. Scrap. This, along with limestone and coke, are fed into a furnace for melting. Thereafter, the molten metal is introduced into the rotating metal mould so as to distribute the molten metal by centrifugal forces over the mould surface and held there till solidification results. Thereafter, the castings are sent to the normalising furnace for stress relieving and after cleaning, the rough castings are given a coat of bitumen both inside and outside. Thereafter, they are ready for delivery. It is stated that the items are delivered as such without any further machining or processing.

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4. Learned counsel appearing for the writ petitioner submitted that, in the decision reported in (1993) 90 STC 47 (Bengal Iron Corporation and another Vs. Commercial Tax Officer and others), the Supreme Court had an occasion to deal with a similar claim on rough iron castings. Learned counsel submitted that in the face of the decision of the Supreme Court, which was subsequently considered in the decision reported in (1995) 99 STC 87(SC) (Vasantham Foundry Vs. Union of India and others), the Tribunal erred in rejecting the plea of the assessee/petitioner herein to treat the same as declared goods. Learned counsel submitted that in the light of the above referred decisions of the Supreme Court, cast iron spun pipes can be characterised only as cast iron castings to be assessed as declared goods. Learned counsel also questioned the jurisdiction of the assessing authority to re-open the assessment under Section 16(1)(b) of the Act and placed reliance on the decision reported in (1996) 103 STC 95 (State of Tamil Nadu Vs. Devendran & Co.) .

5. Learned counsel for the petitioner also placed reliance on the decision reported in 35 ELT 605 (TATA Iron & Steel Co. Ltd., V. Union of India and Others), [2003] 129 STC 238 (Tube Investments of India Limited Vs. Deputy Commercial Tax Officer, Group III, Enforcement-I, Greams Road, Chennai and others) Vol. 5 VST 476 (M/s. I.P.Rings Limited V. The Tamil Nadu Taxation Special Tribunal and others) in support of his contention that the product manufactured and sold by them are only rough casting pipes and hence, liable to be assessed only as declared goods.

6. Referring to the manufacturing process, learned counsel submitted that the cast iron spun pipes are sent to the furnace for stress relieving. After cleaning, the pipes are dipped into bitumen and finally, the end product is Cast Iron Spun Pipes ready for use. These items are to be supplied to the Madras Metropolitan Water Supply and Sewerage Board, Tamil Nadu Water Supply and Drainage Board and Tamil Nadu Housing Board.

7. Learned counsel placed reliance on G.O.P.No.103 dated 24.1.1992 and G.O.P.No.253 dated 17.3.1986 to submit that if the iron and steel scraps and raw materials had already suffered tax under Tamil Nadu General Sales Tax Act, the end product of iron and steel re-rolled and sold would be exempted from taxation.

8. As regards the issues in Writ Petition Nos.27088 to 27091 of 2005, apart from the issue on cast iron spun pipes on declared goods, there is yet another issue relating to the inspection charges collected by the petitioner on behalf of the customers and paid to the third party assessed as part of the taxable turnover. The question is whether the same has to be treated as pre-sale or post-sale price for the purpose of inclusion in the taxable turnover. On this issue, the assessee contended that in terms of Explanation 2 to Section 2 of the Tamil Nadu General Sales Tax Act, 1959, the service charges charged for separately in the bills issued in accordance with the agreement with the customer would not form part of the turnover. The assessee contended that admittedly, the inspection charges was the responsibility of the buyer and that there was

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a separate clause in the agreement providing for payment of inspection charges by the petitioner and are reimbursed by the buyers to the petitioners. Hence, the inspection charges represented service charges not forming part of the sale price. Hence, applying the decisions of this Court as well as the Apex Court, the impugned order is liable to be excluded in the computation of taxable turnover. The assessee lost its appeals before the authorities below. The Tax Case Revisions preferred were rejected by the Tamil Nadu Taxation Special Tribunal by its order dated 28th April 2000. Hence, the petitioner has preferred these writ petitions before this Court.

9. On the issue of service charges, learned counsel submitted that these are separable part of the agreement; as such, the question of inclusion of the inspection charges in the sale price does not arise. Learned counsel further submitted that the customers were very particular about the quality of the Spun Pipes according to the standard specification by the Bureau of Indian Standards. Having regard to the specification and the requirement insisted on, the inspection and certification, being an independent aspect of the contract, the charges paid but reimbursed subsequently is not included in the bill. Hence, the question of inclusion of the inspection charges in the turnover does not arise. In the circumstances, learned counsel submitted that the view of the Tribunal is totally untenable having regard to the decision of this Court relating to re-sale and inspection charges, which are specifically and separately mentioned as not forming part of the same.

10. Learned Special Government Pleader appearing for the respondent/Revenue, however, submitted that even by the description given by the petitioner as regards the manufacture of the Spun Pipes, it is clear that the goods manufactured did not retain its character of rough castings as has been contended. He pointed out that the decision of the Supreme Court reported in (1995) 99 STC 87 (Vasantham Foundry Vs. Union of India and others) supports fully the case of the Revenue that the products had not retained their rough or basic form. The fact that the goods marketed were ready for use as such, would clearly show that what had been delivered was not rough casting, but a final product and hence, even going by the decision of the Supreme Court reported in (1995) 99 STC 87 (Vasantham Foundry Vs. Union of India and others), the petitioner is not entitled to the relief.

11. Heard counsel for both sides.

12. A perusal of the orders of the authority below show that the order placed was for the sale of cast iron spun pipes.

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13. A reading of the orders of the authority below give the details of the working process of the cast iron spun pipes. The pipes are sold to the Madras Metropolitan Water Supply and Sewerage Board, Tamil Nadu Water Supply and Drainage Board and the Tamil Nadu Housing Board. It is not denied by the petitioner herein that these are water supply materials ready for use as such.

14. Learned counsel for the petitioner places great reliance on the decision reported in (1995) 99 STC 87 (Vasantham Foundry Vs. Union of India and others) to impress on the fact that the items manufactured by the assessee are only rough castings and hence, liable to be assessed as declared goods. A perusal of the decision of the Apex Court reported in (1995) 99 STC 87 (Vasantham Foundry Vs. Union of India and others), at page 92, shows that the question that fell for determination therein was whether "cast iron" in the list of declared goods would include "cast iron castings". The facts therein were that after melting the raw materials and adding requisite quantity of carbon, silica etc., the molten metal of cupola furnace was poured into the moulds of different specifications to get the cast iron castings as required by the end user. The foundry owners manufacture cast iron castings according to the specification of the customers, who, in turn, manufacture man-hole covers, pipes, components for automobile industry and agricultural implements. This requires the cast iron castings to undergo the machining, grinding, polishing and various other processes. Referring to the decision of the Supreme Court reported in (1993) 90 STC 47 (Bengal Iron Corporation and another Vs. Commercial Tax Officer and others), the Supreme Court held that "having the purpose behind Section 14 and 15 of the Central Sales Tax Act in mind, cast iron cannot be construed to mean anything but the solidified material which is bought and sold in inter-state trade or commerce. The shape and size of the solidified material is quite unimportant for the purpose of Section 14. If molten metal is poured into a mould, what comes out may be regarded as a casting. Even then, such iron casting in its solid form must be treated as "cast iron" in Section 14(iv) of the Central Sales Tax Act. To repeat, the test is whether the goods in question are being bought and sold, i.e., dealt with and understood, in commercial parlance as cast iron or as different goods, e.g., man-hole covers, pipes, motor parts, etc."

15. The essential test, hence, is whether the cast iron castings are primary products or rough form. If it is not so, then the items in question necessarily fall out of the consideration as declared goods. The contention taken by the learned Special Government Pleader is that the assessee's products are not castings but cast iron products, merits to be accepted. The assessment made, hence, cannot be found fault with and is in tune with the decision of the Supreme Court. The decision relied on by the petitioner really confirms the stand taken by the respondent herein.

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16. Learned counsel took serious objection to the findings of the Sales Tax Appellate Tribunal to submit that cast iron spun pipes did not undergo any machining. The mere fact that they were dipped into cool tar does not mean it underwent machining. When specifically asked about as to the nature of supply, learned counsel submitted that merely because molten metal castings are given a shape as pipes, it does not make the product as one different from castings. We do not agree. Learned counsel could not deny the fact that the outcome of the casting was a pipe to be supplied to the various statutory bodies as per the requirements. Factually, this really makes a distinction between mere castings and products made out of castings, such as the pipe. The Supreme Court, in its decision reported in (1995) 99 STC 87 (Vasantham Foundry Vs. Union of India and others), at page 99, clearly declares that the products made out of cast iron castings are not the same as cast iron to be treated as declared goods. Admittedly, the molten metal was fed into the rotating mould and by the application of centrifugal forces, the molten metal is distributed over the surface and the cast pipes are sent to the normalising furnace for stress relieving to go for further coating of tar, ready to be supplied to the customers as per the specifications. Hence, the authorities below have rightly come to the conclusion that the products of the assessee are neither cast iron nor mere cast iron castings to fall under the Second Schedule to be treated as declared goods. Going by the narration given by the assessee, we find it difficult to accept the plea of the petitioner herein for an assessment as declared goods.

17. As to the claim of the assessee that the assessing authority had no jurisdiction to re-assess the turnover under Section 16(1)(b) of the Act, it may be seen that Section 16(1)(b) confers jurisdiction on the assessing authority to reassess wherever the whole or any part of the turnover of the business of a dealer has been assessed at a rate lower than the rate at which it is assessable. A perusal of the records show that the assessing authority originally assessed the turnover treating it as declared goods at 4%. However, the assessing officer invoked the provisions of Section 16(1)(b) to reassess the turnover in respect of cast iron spun pipes which attracted levy under Section 3(1) and not as declared goods. A reading of the provision clearly shows that the Assessing Authority is conferred the jurisdiction to reopen an assessment wherever the turnover has been assessed at a rate lower than the rate at which it is assessable. The original assessment as declared goods had resulted in an under-assessment at a rate lower than that of the rate at which it is assessable as pipes. Considering the same, we do not find any merit in the contention of the learned counsel that the power is available under Section 16(1)(b) only if the item in question is to be assessed under the very same Schedule and not to bring it under a different Schedule.

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18. The assessee made a similar plea before the Tamil Nadu Taxation Special Tribunal. However, the Special Tribunal rejected the reliance placed on the decision reported in [1996] 103 STC 95 (State of Tamil Nadu Vs. Devendran and Co.) and held that the said decision has no relevance to the issue raised by the assessee. In the context of the proceedings taken to correct the error in the assessment to bring the product under the correct rate of tax, the invocation of the jurisdiction under Section 16 (1)(b) of the Act cannot be faulted with. We agree with the submission made by the learned counsel for the Revenue that the items dealt with by the assessee are cast iron products, which is not the same as castings. Learned counsel for the petitioner, however, drew our attention to the decision reported in Vol. 5 VST 476 (M/s. I.P.Rings Limited V. The Tamil Nadu Taxation Special Tribunal and others) as well as 35 ELT 605 (TATA Iron & Steel Co. Ltd., V. Union of India and Others).

19. A perusal of the decision reported in Vol. 5 VST 476 (M/s. I.P.Rings Limited V. The Tamil Nadu Taxation Special Tribunal and others) shows that the item in question relates to steel rings manufactured and marketed by the assessee. The assessee claimed assessment under the second schedule. The assessing authority, however, treated the same as automobile components attracting liability under the First Schedule. Going by the nature of the product, this Court held that polishing of the rings would not, in any way, alter the basic character of the product that what was supplied, in fact, was a steel ring. Referring to the decision of the Supreme Court reported in (1995) 99 STC 87 (Vasantham Foundry Vs. Union of India and others), this Court took the view that the products of the assessee therein are essentially declared goods. This Court noted the sample of the rings produced before it for consideration. This Court further held that the goods are nothing but steel rings finely made of various sizes. There was a small cut in both the ends of the rings. Hence, going by the nature of the product, this Court held that the said item is taxable under Entry 4(Viii) of the II Schedule of the Act and could not be regarded as an automobile component.

20. As regards the decision reported in 1985 (35) ELT 605 (TATA Iron & Steel Co. Ltd., V. Union of India and Others), the issue therein relates to the duty leviable on wheels and axles which were supplied to the Railways in rough machine condition. The excess steel or the manufacturing defects were removed and subsequently precision machined by the Railways at their workshop. Considering this aspect, the Supreme Court held there were two stages at which the duty is payable one at Item 26AA on the forged products and under Item 68 on the completion of the manufacture of finished goods. Since the precision machining was at Railways workshop, the appellant was not liable to pay duty under Item 68.

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21. The Apex Court pointed out that the finished goods namely, wheels and axles came into existence only after precision machining; as such, the assessee was not liable to pay any duty.

22. It must be noted that the classification of the items have to be understood in the background of the description of the entries therein. The decisions relied on, hence, need to be understood on the scope of the entries and the description of the entries and tax treatment of the same. In the circumstances, it is difficult to draw a comparison between two cases where the entries themselves are differently worded. The question whether a particular item falls under a particular entry depends on the description of the entry, the nature of the product dealt with and the treatment given under the particular taxing enactment. Hence, given the nature of the product sold, applying the decision of the Supreme Court reported in (1995) 99 STC 87 (Vasantham Foundry Vs. Union of India and others), we do not find any justification to differ from the view expressed by the authorities below. Consequently, we reject the writ petitions and confirm the order of the Tamil Nadu Taxation Special Tribunal. We hold that the jurisdiction invoked by the assessing authority to re-assess the turnover on the ground that the assessment had been done at a rate lower than what ought to have been done, is within the power given under Section 16(1)(b) of the Act. Hence, the submission made by the learned counsel for the petitioner fails both on the character of the goods sold as well as on the jurisdiction to reassess the turnover under Section 16(1)(b).

23. As to the other questions raised in Writ Petition Nos.27088 to 27091 of 2005 relating to the assessment years 1984-85 to 1987-88 relating to the inspection charges, it is seen that the charges collected were in the nature of pre-sale charges, which are connected with the contract of sale. The assessing authority pointed out that the expenses were made at the request of the customers.

24. As per the terms of the conditions, the Pipes are required to be inspected by the DGS & D before it is despatched to the purchasers. Certificate of fitness before delivery of the goods were issued by the Director General of Supplies and disposals. It is admitted by the assessee that only after the certificate of fitness was issued, the goods were despatched. The assessee pointed out that even though the inspection charges were paid by the assessee, separate invoices were raised and collected from the purchasers. The charges were initially paid by the dealer and later on by the customers through separate invoices. By the very nature of this payment not included in the invoice, learned counsel submitted that it is clear that they are totally separated and divorced from the contract. Learned counsel for the petitioner submitted that going by the terms of the contract, the authorities below erred in

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including the same as part of the sale price. Clause 7 of the agreement refers to the inspection of goods and certification by the Director General of Supplies and Disposals before any delivery is effected to the customers. Clause 7 of the agreement shows that the certification by the DGS & D is necessary before the sale of pipes to the customers. Clause 7 also speaks on the inspection charges. This clause reads as follows:

> " Clause 7-- Test certificate and inspection:
> Inspection of C.I. Pipes by the DGS & D is necessary. Inspection charges may be included in your bills of supply, along with documentary proof, for having paid the inspection charges to DGS & D. Concerned consignee EE, will arrange to reimburse the inspection charges to you. "

25. It may be seen that the amount collected towards inspection charges works out to 0.5% in the total value of the sales. Periodical inspections were made by the Director General of Supplies and Disposals for giving certificate of fitness before delivery of goods. It is not denied by the assessee that the delivery is effected only on the certificate issued by the Director General of Supplies and Disposals. The Tribunal took the view that inspection charges are part and parcel of the sale agreement in terms of Explanation 2(ii) to Section 2(r). Hence, the said amount is liable to be included in the taxable turnover. The Tamil Nadu Taxation Special Tribunal, in its order, rightly took the view that the decision relied on by the petitioner before the Tribunal had no relevance to the facts projected. The Special Tribunal pointed out the difference between cases relating to the lifting of timber by the coolies and to the inspection by the Director General of Supplies and Disposals in the case on hand and held that the role played by the Director General of Supplies and Disposals is an important role in the sale of the Spun Iron Pipes. Without the certificate, there could have been no sale of Spun Pipes to customers. Hence, the sale itself could be effected only to the satisfaction of the customers on the certificate issued. Referring to the decision of the Kerala High Court reported in [1981] 48 STC 563 (Joseph and Sons Vs. State of Kerala), the Tribunal held that the charges for anything done by the dealer at the time of and before delivery would certainly bring the charges within the fold of Explanation 2(ii) to Section 2(r).

26. We agree with the decision of the Special Tribunal that the inspection charges are pre-sale charges and are part of the transaction of the sale. A perusal of the clauses in the agreement show that the inspection and certification of the goods is an integral element of the transaction of the sale. Parties have agreed that only on certification, the goods would be despatched. In the circumstances, it matters very little whether the assessee raises a separate invoice or shows the same separately in its invoice. The question whether the payment of inspection charges are pre-sale charges or not has to be seen in terms of the clauses pertaining thereto in the contract between the parties. If the inspection

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charges is an expenditure incurred for making the goods available to the customer, it is clearly a component of the turnover. The inclusion of the inspection charges has to be understood from the manner in which the transactions are actually carried out.

27. Having regard to the terms of the contract, we do not find any ground to accept the claim of the assessee to exclude the inspection charges from the taxable turnover. The decision of the Supreme Court reported in [1993] 88 STC 151 (RAMCO CEMENT DISTRIBUTION CO. P. LTD. Vs. STATE (S.C.) has a bearing on this issue that even if separate invoice is raised by way of reimbursement, the expenses incurred towards freight charges would nonetheless form part of the taxable turnover. The said decision clearly shows that even if separate invoice is raised or the charges shown separately in the invoice, if what had been expended on behalf of a particular customer is an integral part of the single transaction and are inextricably linked to the transaction of sale, the charges would nonetheless form part of the taxable turnover. Even though the present case is one relating to inspection charges, the inspection and certification closely linked to the transaction of sale is liable to be included in the turnover for assessment.

28. In the light of the above said decisions, we have no hesitation in rejecting the writ petitions preferred by the assessee. Consequently, we confirm the view of the Tamil Nadu Taxation Special Tribunal Accordingly, all the writ petitions stand dismissed. No costs. Consequently, WPMP Nos.29519 to 29526 of 2005 are also dismissed.

sl

Sd/-
Asst.Registrar

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Sub Asst.Registrar

To:

1. The Tamil Nadu Taxation Special Tribunal, Second Floor,
   Singaravelar Maligai, Rajaji Salai, Chennai - 600 001.

2. The Sales Tax Appellate Tribunal, Main Bench, Second Floor,
   New City Civil Court Buildings, Chennai - 600 104.

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3. The Appellate Assistant Commissioner (CT) V
Collectorate Campus, Kancheepuram - 631 502

4. The Appellate Assistant Commissioner (CT) IV
Sixth Floor, Kuralagam Annexe, Chennai - 108.

5. The Commercial Tax Officer, Adayar Assessment Circle,
Chennai - 600 028.

6. The Commercial Tax Officer, Mylapore Assessment Circle,
46, Chamiers Road, Chennai - 600 028.

+2 ccs to Mr.C.Venkatraman, Advocate Sr.Nos.59172 & 59173.

+1 cc to The Special Government Pleader (Taxes) Sr.No.59239.

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